

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

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HODELL-NATCO INDUSTRIES, INC.,

Plaintiff,

-vs-

SAP AMERICA, INC., et al.,

Defendant.  
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: CASE NO. 1:08 CV 02755  
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: ORDER  
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UNITED STATES DISTRICT JUDGE LESLEY WELLS

This Court, having reviewed Hodell's and SAP's deposition designations for Jay Sheldon and the parties' respective objections thereto, resolves those objections as follows.

**I. HODELL'S OBJECTIONS TO SAP'S DEPOSITION DESIGNATIONS OF TRIAL TESTIMONY FOR JAY SHELDON WITH SAP'S REPLIES**

Testimony Designated by SAP	Hodell's Objection to SAP's Designated Testimony	SAP's Reply to Hodell's Objection
34:03-15	Hearsay <i>Overruled</i>	These out-of-court statements may be offered against Hodell because they were made by a Hodell employee on a matter within the scope of that relationship and while it existed. 801(d)(2).
74:23-76:05	Hearsay <i>Overruled</i>	801(c). Not hearsay. No out of court statement is being offered for the truth of the matter asserted therein. The witness is testifying as to his own personal knowledge.
77:08-81:14	Relevance; confusion of the issues <i>Sustained</i>	The testimony and the exhibit discussed are relevant to SAP's contention that Hodell's approach to licensing and implementing Prophet 21 shows that Business One did not have the catastrophic effect on Hodell's business that Hodell claims it did.
86:05-91:10	Relevance; confusion of the issues <i>Sustained</i>	This testimony is relevant as to how transaction volume and insufficient hardware can affect ERP performance, including Epicor's P21 software.
112:24-119:21	Relevance; confusion of the issues <i>Sustained</i>	This testimony is relevant as to the types of issues Epicor's P21 software faced after go-live and whether they were different than those encountered after the Business One go-live.
129:08-148:2	Relevance; confusion of the issues; improper character evidence; hearsay <i>Sustained</i>	The testimony and the exhibit discussed are relevant to issues of causation, damages, and problems Hodell experienced on its subsequent ERP system. There is no confusion of the issues, and SAP does not intend to use this testimony as character evidence.
152:11-155:05	Relevance; confusion of the issues <i>Sustained</i>	The testimony and the exhibit discussed are relevant to issues of causation, damages, and problems Hodell experienced on its subsequent ERP system. There is no confusion of the issues.
160:01-163:08	Relevance; confusion of the issues. <i>Sustained</i>	The testimony and the exhibit discussed are relevant to issues of causation, damages, and problems Hodell experienced on its subsequent ERP system. There is

		no confusion of the issues.
165:20-178:23	Relevance; confusion of the issues; improper opinion testimony (Evid. R. 701) <i>Sustained</i>	This testimony and the exhibit discussed are relevant as to the issues of whether there was a lack of diligence on Hodell's part as to the testing of P21. It is also relevant as to the types of performance issues experienced by P21 after go-live.  There is no 701 violation. The witness's testimony is rationally based on the witness's perception and helpful to determining facts at issue.
182:17-191:22	Hearsay; relevance; confusion of the issues, improper opinion testimony (Evid. R. 701) <i>Sustained</i>	This testimony and the exhibit discussed are relevant as to the issues of whether there was a lack of diligence on Hodell's part as to the testing of P21. It is also relevant as to the types of performance issues experienced by P21 after go-live.  There is no 701 violation. The witness's testimony is rationally based on the witness's perception and helpful to determining facts at issue.
218:06-220:09	Relevance; confusion of the issues <i>Sustained</i>	This testimony is relevant as to whether there were any benefits enjoyed or damages suffered by Hodell as a result of the P21 implementation.



II. SAP'S OBJECTIONS TO HODELL'S COUNTER-DESIGNATION OF TRIAL TESTIMONY FOR JAY SHELDON

Testimony Counter-Designated by Hodell	SAP's Objection to Counter-Designated Testimony
195:22-196:24	<ul style="list-style-type: none"><li>• SAP objects to these questions and answers under Federal Rule of Evidence 602.</li><li>• SAP additionally objects to certain questions contained herein on the basis of improper form.</li></ul> <i>Sustained</i>
202:22-	<ul style="list-style-type: none"><li>• SAP objects to these questions and answers under Federal Rule of Evidence 602.</li></ul> <i>Sustained</i>

*Lesley Wells*  
*U.S. District Judge*